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State Attorney General—Guardian of Public Charities???

Robert L. Gray*

IN 1954 THE SECOND DISTRICT COURT OF APPEAL of California rendered an eloquent, if rather theatrical, opinion in the case of *George Pepperdine Foundation v. Pepperdine*.¹ It was alleged that George Pepperdine endowed the Foundation with over \$3,000,000; that he dominated and controlled the Foundation from the time of its incorporation; that other trustees were inactive and were dominated by Pepperdine; that plaintiff's assets were continually diminished through the bad investments of Pepperdine; that through Pepperdine's negligent management, not only the original \$3,000,000 was lost, but that a debt of \$551,300 was incurred. In the trial court the case was dismissed after special and general demurrers were sustained, and plaintiff refused to amend its complaint.

Before affirming the judgment of the trial court, the Court of Appeals heaped lavish praise on Pepperdine for his generosity and charitable instincts. The following quote is typical of the language used:

Who is the "Foundation" otherwise than the shadow of George Pepperdine, if not his alter ego? If he as an individual could not be sued for negligently investing his own moneys intended for charitable uses, why should his "Foundation" under the management of strangers prosecute an action to recover from the original donor and his friends what, through negligence, they lost for the Foundation.

The court also held that the Foundation was a public charitable trust, the beneficiaries of which were an indefinite class of persons. Therefore, the *only* person qualified to maintain an action on behalf of the Foundation was the attorney general. This portion of the case was later overruled in *Holt v. College of Osteopathic Physicians and Surgeons*,² but for at least ten years it was the law in California.

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¹ 126 Cal. App. 2d 154, 271 P. 2d 600 (1954).

² 40 Cal. Rptr. 244, 394 P. 2d 932 (1964).

The *Pepperdine* case graphically illustrates the need for closer supervision of charitable trusts by governmental agencies. If the attorney general of California or his subordinates had the duty and power to supervise the administration of charitable trusts, perhaps the \$3,000,000 would have been preserved for the benefit of prospective beneficiaries rather than lost through the alleged negligence.

As a result of cases of this nature, the legislature of California adopted the UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT in 1955.³ While California was the first state to adopt the uniform act, it was not the first state to adopt legislation to supervise and control the administration of charitable trusts.

In 1943, New Hampshire pioneered in this type of legislation. The New Hampshire act⁴ gave the attorney general the authority to prepare and maintain a register of all charitable trusts in that state.⁵ The office of director of charitable trusts was established.⁶ The director was appointed by the governor, to serve under the supervision of the attorney general.⁷ Wide powers⁸ to formulate rules and regulations for gathering information and to further investigate charitable trusts were given to the attorney general.⁹ Trustees were required to attend investigations if their attendance was requested.¹⁰ Provision was made for the attorney general to bring whatever action was necessary to compel trustees' compliance with the act.¹¹

The success of the New Hampshire legislation was apparent at once. By 1944, over 900 trusts with combined assets of over \$9,000,000 were registered.¹² Evidence of mismanagement was found in approximately 25 percent of the trusts.¹³ This imme-

³ Cal. Gov't Code §§ 12580 to 12596 (1959).

⁴ N. H. Rev. Stat. Ann. ch. 7, §§ 19 to 32 (1955).

⁵ *Id.* at § 19.

⁶ *Id.* at § 20.

⁷ *Ibid.*

⁸ *Id.* at § 22.

⁹ *Id.* at § 24.

¹⁰ *Id.* at §§ 24 & 25.

¹¹ *Id.* at § 28. As to supervision by other state agencies (i.e., licensing and approvals), see, Oleck, *Non-Profit Corps. & Assns.*, c. 2 (1956).

¹² Bogert, *Proposed Legislation Regarding State Supervision of Charities*, 52 Mich. L. Rev. 633 (1954).

¹³ *Ibid.*

diated success did not cause a stampede among other states to adopt similar legislation. It was not until 1950 that another state, Rhode Island, passed a law¹⁴ which was closely patterned after the New Hampshire act. Two other states followed suit in 1953; Ohio¹⁵ and South Carolina,¹⁶ and Massachusetts joined them in 1954.¹⁷

In 1954, the National Conference of Commissioners of Uniform State Laws, having recognized the need for legislation in this area, published the UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT,¹⁸ which was similar to the New Hampshire law. As has been stated, California soon passed the uniform act.¹⁹ Iowa (1959),²⁰ Michigan (1961),²¹ Illinois (1961),²² and Oregon (1963)²³ have since passed the uniform act. There are slight variations in the versions passed by the above states, but the general effect of their laws is the same.

While the legislatures of these states have provided the law, they have not always provided the revenue necessary to hire the human machinery needed. Such a situation exists in Ohio, where in 1960 one assistant attorney general aided by one clerk was expected to supervise 1,130 charitable trusts with assets of over \$250,000,000.²⁴ Obviously, this one assistant attorney general working at full efficiency could not reasonably be expected to properly supervise that number of trusts. This appears to be false economy on the part of the state. State welfare funds are used to support the poor who might be prospective beneficiaries of the trust income were it not diverted by negligent or inefficient administration. In addition, revenue is lost by granting tax immunity to trusts, foundations and nonprofit corporations which, through poor or dishonest management, never achieve the goals for which they originated.

¹⁴ Gen. Laws of R. I. tit. 18, ch. 9, §§ 1 to 15 (1956).

¹⁵ Ohio Rev. Code §§ 109.23 to .99 (1953).

¹⁶ Code of Laws of S. C. §§ 67 to 81 (1962).

¹⁷ Ann. Laws of Mass. ch. 12, §§ 8A to 8J (1961).

¹⁸ 9C U. L. A. 210 (1957).

¹⁹ Cal. Gov't Code, *supra*, n. 3

²⁰ Iowa Code Ann. §§ 682.48 to .59 (1946).

²¹ Comp. Laws of Mich. §§ 14.251 to .266 (Supp. 1961).

²² Ill. Ann. Stat. ch. 14, §§ 51 to 64 (1963).

²³ Ore. Rev. Stat. §§ 128.610 to .990 (1963).

²⁴ Karst, *The Efficiency of the Charitable Dollar: An Unfilled State Responsibility*, 73 Harv. L. Rev. 433 (1960).

Why is it important to adopt legislation which gives the attorney general the duty of collecting information concerning the administration of charitable trusts and the power to institute an action to correct abuse? This question is quickly answered by an examination of the authorities as to what other party can institute such an action.

Generally neither the settlor nor his heirs can bring an action to enforce a charitable trust unless he has reserved a power to do so.²⁵ These decisions are justified upon looking at the status of the settlor after the trust is created. He conveys the legal title to the trustee and the equitable title to the prospective beneficiaries; therefore, without a specific reservation, the settlor has no remaining interest on which to base his action.

Generally, the beneficiaries of a charitable trust are unknown²⁶ and therefore lack the necessary interest to bring suit to enforce the trust.²⁷ In the rare case where the beneficiary can be determined, he can successfully enforce the trust.²⁸

It is obvious that where trust funds are being diverted or mishandled a trustee would not ordinarily bring a suit against himself. However if there are several trustees, one or more may institute a suit to compel the others to properly carry out their duties.²⁹

Thus it is apparent that parties other than the attorney general only infrequently have sufficient interest to bring a suit to enforce a charitable trust. In addition, since the public is the true beneficiary of the trust,³⁰ a representative of the public should enforce it. That representative is generally held to be the attorney general.³¹

But even where he has the right to supervise and enforce, legislation is needed to give him power to obtain information as to how the various trusts and nonprofit corporations are being

²⁵ *Amundson v. Kletzing-McLaughlin Memorial Foundation College*, 247 Iowa 91, 73 N. W. 2d 114 (1955); *Fairbanks v. City of Appleton*, 249 Wis. 476, 24 N. W. 2d 893 (1946).

²⁶ *Doyle v. Whalen*, 87 Me. 414, 32 A. 1022 (1895).

²⁷ *Wiegand v. Barnes Foundation*, 374 Pa. 149, 97 A. 2d 81 (1953); *Barker v. Hauberg*, 325 Ill. 538, 156 N. E. 806 (1927).

²⁸ *Frank v. Clover Leaf Park and Cemetery Association*, 29 N. J. 193, 148 A. 2d 488 (1959); *Cannon v. Stephens*, 18 Del. Ch. 276, 159 A. 234 (1932).

²⁹ *St. James Church v. Superior Court*, 135 Cal. App. 2d 352, 287 P. 2d 387 (1955).

³⁰ *Bogert, Trusts & Trustees*, § 411 (2d Ed. 1964).

³¹ *Delaware Trust Co. v. Graham*, 30 Del. Ch. 330, 61 A. 2d 110 (1948); *Fidelity Union Trust Co. v. Ackerman*, 18 N. J. Super. 314, 87 A. 2d 47 (1952).

administered. Has this ability to obtain information been provided?

Where sufficient personnel have been provided, and there has been a concerted effort by that personnel, the results have been good. This has been true particularly in New Hampshire and Rhode Island. In several other states, there has been little apparent activity since the passage of their legislation. Whether this has been due to lack of personnel, general apathy or simply yielding to political pressures, the general public is being dealt a serious injustice by this inaction.

For several years, a committee of the United States Congress has been investigating abuses by foundations.³² This investigation has revealed many abuses perpetrated by some of the largest foundations in the nation. Congressman Wright Patman, chairman of this committee, has proposed certain legislative reforms to correct these abuses.³³ While certain of these suggestions, if enacted, would serve their designated purpose, they would also serve to handicap, if not cripple, many legitimate and conscientious foundations.³⁴ In an era when the growth of the federal government has been the subject of considerable criticism, do we need restrictive federal legislation in this field? If state governments can effectively fulfill this function, federal intervention would seem unnecessary.

Such legislation without sufficient funds for providing qualified personnel will accomplish very little. In addition, competent leadership, which must come from the attorney general, is essential. Most states have not enjoyed this in the past. This is best summarized in the words of Professor Bogert:

Under the practice which has prevailed for centuries in England and the United States, the attorney general, without great fault on his part, has proved a poor guardian of the welfare of charitable gifts.³⁵

³² Chairman of House Select Committee on Small Business, 87th Cong., 2d Sess., *Tax-exempt Foundations and Charitable Trusts: Their Impact on Our Economy* (Comm. Print. 1962). The investigation seems to have been spurred by an article by Dean Howard L. Oleck of Cleveland-Marshall Law School of Baldwin-Wallace College: see, Oleck, *Foundations Used as Business Devices*, 9 Clev-Mar. L. R. 339 (1960).

³³ *Ibid.* See also, N. Y. Times, p. 1 (Feb. 9, 1964) as to the Treasury Dept. findings on these proposals.

³⁴ For detailed reviews of the report, see: Riecker, *Foundations and the Patman Committee Report*, 63 Mich. L. Rev. 95 (Nov. 1964); Krasnowiecki and Brodsky, *Comment on the Patman Report*, 112 U. Pa. L. Rev. 190 (1963); N. Y. Times, *supra*, n. 33.

³⁵ Bogert, *op. cit.*, *supra*, n. 12, at 634.

The following paragraphs will summarize the legislation of the various states dealing with this subject. While it is not intended to be a comprehensive study of all state laws concerning charitable trusts and nonprofit corporations, it will be a useful outline in determining which state legislatures have provided adequate legislation.

Alabama

By statute, any person interested in the execution of a trust, including the settlor, may bring an action in equity for the removal of any trustee who has violated or threatened to violate his trust.³⁶ On the basis of this statute, the Supreme Court of Alabama held that the state, on relation of the attorney general, was a proper party to institute a suit seeking establishment and enforcement of a public charity.³⁷

Alaska

Alaska's statute dealing with nonprofit corporations³⁸ does not specifically discuss charitable trusts or the power of the attorney general to supervise and enforce them.

Arizona

Nonprofit corporations are required to file an annual statement with the corporation commission.³⁹ Failure to comply can result in a monetary penalty⁴⁰ or revocation of the corporation's charter.⁴¹

A trustee of any testamentary trust may file an account with the court where the will was probated, or he may be required to do so upon the request of any beneficiary.⁴²

Arkansas

In 1963, Arkansas enacted a nonprofit corporation law.⁴³ The act provides that the attorney general or prosecuting attorney of the county in which the corporation is domiciled may

³⁶ Code of Ala. §§ 58 to 65 (1958).

³⁷ *State ex rel. Carmichael v. Bibb*, 234 Ala. 46, 173 So. 74 (1937).

³⁸ Alaska Stat. tit. 10, ch. 20, §§ .010 to .270 (1962).

³⁹ Ariz. Rev. Stat. Ann. tit. 10, § 211 (1956).

⁴⁰ *Id.* at § 104.

⁴¹ *Id.* at § 212.

⁴² *Id.* at tit. 14, § 1021.

⁴³ Ark. Stat. Ann. tit. 64, §§ 1901 to 1921 (Supp. 1963).

bring an action for involuntary dissolution for violations of certain listed regulations.⁴⁴

Charitable organizations must file required information with the secretary of state before soliciting funds.⁴⁵ These organizations must also keep records and file annual reports with the same official. There are special provisions for medical,⁴⁶ dental⁴⁷ and professional corporations.⁴⁸

California

California adopted the Uniform Supervision of Trustees for Charitable Purposes Act in 1955.⁴⁹ It was amended in 1959 to include charitable corporations.⁵⁰ Hospitals, educational and religious institutions are exempted from the operation of the act.⁵¹

In the Corporation Code, the attorney general is given an additional power to investigate any nonprofit corporation holding property subject to a charitable trust.⁵²

Colorado

The statutes dealing with nonprofit corporations,⁵³ make no mention of the power of the attorney general or district attorney. However, the statutes have been enforced by a district attorney,⁵⁴ and in a proceeding for a writ of mandamus against the secretary of state, the attorney general defended him.⁵⁵

Connecticut

One of the duties of the attorney general is that he shall represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes.⁵⁶ In addition to the cases where the attorney general has initiated the

⁴⁴ *Id.* at § 1918.

⁴⁵ *Id.* at §§ 1602 to 1604.

⁴⁶ *Id.* at §§ 1701 to 1717.

⁴⁷ *Id.* at §§ 1801 to 1817.

⁴⁸ *Id.* at §§ 2001 to 2018.

⁴⁹ Cal. Gov't Code, *supra*, n. 3.

⁵⁰ *Id.* at § 12581.

⁵¹ *Id.* at § 12583.

⁵² Cal. Corp. Code §§ 9505 and 10207 (1955).

⁵³ Colo. Rev. Stat. ch. 31, art. 20, §§ 1 to 7 (1953).

⁵⁴ *International Service Union Co. v. People ex rel. Wettengel*, 101 Colo. 1, 70 P. 2d 261 (1937).

⁵⁵ *Saunders v. People ex rel. Tyler*, 99 Colo. 468, 63 P. 2d 1231 (1936).

⁵⁶ Conn. Gen. Stat. Ann. tit. 3, § 125 (1958).

action,⁵⁷ it has also been held that a beneficiary can commence the suit if the attorney general refuses.⁵⁸

Trustees of charitable community trusts are required to render annual accounts to the proper district court.⁵⁹ In another section, all testamentary trustees are required to file annual accounts.⁶⁰

Delaware

All trustees named in a will or appointed by a Court of Chancery are required to file periodic reports with that court.⁶¹

District of Columbia

While not statutory, by judicial decision, a United States attorney may institute an action to require a trustee of a public charity to render an accounting.⁶²

Florida

The statutes dealing with nonprofit corporations⁶³ provide that the attorney general, upon the complaint of any person (coupled with prima facie evidence) shall prosecute the offending corporation, either to annul its franchise or prevent its improper acts.⁶⁴ Nonprofit corporations, organizations or associations which solicit anything of value are required to obtain a permit from the clerk of the circuit court.⁶⁵

All trustees are required to file annual accounts unless waived by the court.⁶⁶ Trustees may be removed for cause by the courts own motion, or upon the application of any beneficiary.⁶⁷ In charitable trusts with unascertainable beneficiaries, the attorney general should represent their interests.⁶⁸

⁵⁷ *Adams v. Link*, 145 Conn. 634, 145 A. 2d 753 (1958); *Conway v. Emery*, 139 Conn. 612, 96 A. 2d 221 (1953).

⁵⁸ *Day v. City of Hartford*, 16 Conn. Supp. 228 (1949); *Daily v. City of New Haven*, 60 Conn. 314, 22 A. 945 (1891).

⁵⁹ Conn. Gen. Stat. Ann. tit. 45, § 82 (1958).

⁶⁰ *Id.* at § 268.

⁶¹ Del. Code Ann. tit. 12, § 3521 (Supp. 1962).

⁶² *Wallace v. Graff*, 104 F. Supp. 925 (1952).

⁶³ Fla. Stat. Ann. ch. 617 (1956).

⁶⁴ *Id.* at § 617.09; see *Jordan v. Landis*, 128 Fla. 604, 175 So. 241 (1937).

⁶⁵ *Id.* at § 617.22.

⁶⁶ *Id.* at § 737.12.

⁶⁷ *Id.* at § 737.18.

⁶⁸ *Id.* at § 737.251.

Georgia

In all cases involving charitable trusts, the attorney general, or the solicitor general represent the beneficiaries.⁶⁹ Either official can sue or be sued in this capacity.⁷⁰

The superior courts of Georgia have visitorial power over all corporations including those organized for charitable purposes.⁷¹

Hawaii

Hawaii provides for a director of regulatory agencies.⁷² Nonprofit corporations are required to report to him annually.⁷³ For failure to report, or certain other offenses, the director may dissolve the corporation.⁷⁴

Idaho

Under Idaho law, every action must be prosecuted in the name of the real party in interest.⁷⁵ In the statutes listing the duties of the attorney general, there is no mention of his representing the beneficiaries of a charitable trust.⁷⁶ On the basis of these two statutes, the Supreme Court of Idaho ruled that the attorney general is unable to maintain an action to protect a public charity.⁷⁷

Illinois

Illinois has adopted the Uniform Supervision of Trustees for Charitable Purposes Act.⁷⁸ In other sections of the statutes, nonprofit corporations are required to file annual reports with the secretary of state.⁷⁹ For failure to do so, the attorney general can bring an action for involuntary dissolution.⁸⁰

⁶⁹ Code of Ga. Ann. tit. 108, § 212 (Supp. 1963).

⁷⁰ *Ibid.*

⁷¹ *Id.* at tit. 22, § 704.

⁷² Rev. Laws of Hawaii ch. 14A, § 14 (Supp. 1963).

⁷³ *Id.* at ch. 172, § 16.

⁷⁴ *Id.* at § 131.

⁷⁵ Idaho Code tit. 5, § 301 (1948).

⁷⁶ *Id.* at tit. 67, § 1401.

⁷⁷ *Hedin v. Westdala Lutheran Church*, 59 Idaho 241, 81 P. 2d 741 (1938).

⁷⁸ Ill. Ann. Stat. §§ 14-51 to -64 (1963); for a case interpreting act, see *Ables Foundation v. Clark*, 28 Ill. App. 2d 556, 192 N. E. 2d 804 (1963).

⁷⁹ *Id.* at § 163a63.

⁸⁰ *Id.* at § 163a49.

Indiana

In the Indiana General Not For Profit Corporation Act,⁸¹ such corporations are required to file annual reports with the secretary of state.⁸² The secretary of state is given wide investigatory powers and for violations of the Act, he can refuse to file the report.⁸³ If litigation follows, it is the duty of the attorney general to represent the state.⁸⁴

Trustees of charitable trusts are required to file an annual report with the circuit court.⁸⁵

Iowa

Iowa has enacted the Uniform Supervision of Trustees for Charitable Purposes Act.⁸⁶ Other sections of the Code require annual accountings to be filed with the secretary of state.⁸⁷ The charter of the corporation may be revoked upon failure to file.⁸⁸

Kansas

All trustees are required to file annual accounts.⁸⁹ There are no provisions which require nonprofit corporations to account, although there is a Chapter dealing with nonprofit corporations.⁹⁰

Kentucky

All trustees are required to report periodically.⁹¹ In the portion of the statutes dealing with nonprofit corporations,⁹² there is no requirement to report.

Louisiana

In Louisiana, business corporation law is applicable to nonprofit corporations.⁹³ All fraternal, patriotic, charitable, benev-

⁸¹ Ind. Stat. Ann. §§ 25-507 to 25-553 (1960).

⁸² *Id.* at § 25-535.

⁸³ *Id.* at § 25-537.

⁸⁴ *Id.* at §§ 25-539 and -549.

⁸⁵ *Id.* at § 31-712.

⁸⁶ Iowa Code Ann. §§ 682.48 to .59 (Supp. 1964).

⁸⁷ *Id.* at § 504.30.

⁸⁸ *Id.* at § 504.31.

⁸⁹ Kan. Gen. Stat. Ann. ch. 59, §§ 1602 and 1605 (1945).

⁹⁰ *Id.* at ch. 17, §§ 2901 to 3008.

⁹¹ Ky. Rev. Stat. Ann. § 25.175 (1963).

⁹² *Id.* at §§ 273.010 to .990.

⁹³ La. Stat. Ann. (Rev. Stat.) art. 12, § 154 (1951).

olent, literary, scientific, athletic or social organizations are required to file annual membership lists with the secretary of state.⁹⁴ For failure to file, the district attorney has authorization to prosecute,⁹⁵ and the attorney general can institute an action to have the organization dissolved.⁹⁶

Louisiana also has sections dealing with charitable trusts.⁹⁷

Maine

The attorney general is instructed to enforce due application of funds given or appropriated to public charities.⁹⁸

Maryland

The Trusts Administration Act gives a court of equity full jurisdiction to enforce charitable trusts upon application of the attorney general. The attorney general, a trustee or any interested party can apply to the court for application of the cy pres doctrine.⁹⁹

Massachusetts

Charitable trust act similar to New Hampshire.¹⁰⁰

Michigan

Uniform Supervision of Trustees for Charitable Purposes Act.¹⁰¹

Minnesota

All charitable associations, except those specifically exempted, are required to file initially¹⁰² and report annually to the secretary of state.¹⁰³ If the association fails to comply, the attorney general has a right to revoke its registration.¹⁰⁴ The statutes dealing with nonprofit corporations¹⁰⁵ provide that the attorney general, director of social welfare, commissioner of taxation or

⁹⁴ *Id.* at § 401.

⁹⁵ *Id.* at § 404.

⁹⁶ *Id.* at § 405.

⁹⁷ *Id.* at art. 1, §§ 2271 to 2295.

⁹⁸ Me. Rev. Stat. Ann. tit. 5, § 194 (1964).

⁹⁹ Ann. Code of Md. art. 16, §§ 195 and 196 (1957).

¹⁰⁰ Ann. Laws of Mass., *supra*, n. 17.

¹⁰¹ Comp. Laws of Mich., *supra*, n. 21.

¹⁰² Minn. Stat. Ann. § 309.52 (1945).

¹⁰³ *Id.* at § 309.53.

¹⁰⁴ *Id.* at § 309.58.

¹⁰⁵ *Id.* at § 317.01 to .69.

commissioner of insurance, or all of them, may require answers to interrogatories, and have the right to examine corporate books and records.¹⁰⁸

Mississippi

No specific legislation.

Missouri

The attorney general, circuit attorney or prosecuting attorney has the right to investigate and if necessary, institute quo warranto proceedings against a nonprofit corporation for misuse or nonuse of its franchise.¹⁰⁷

Montana

Montana has statutes dealing with religious, social and benevolent corporations¹⁰⁸ but such corporations are not required to file an annual account. There is no provision for supervision by the attorney general.

Nebraska

It is the duty of the respective county attorney to represent all beneficiaries of charitable trusts and to enforce such trusts in the proper court.¹⁰⁹

Nevada

In a charitable trust, the attorney general is given the same rights as the beneficiaries have in a private trust.¹¹⁰

New Hampshire

New Hampshire legislation has been discussed earlier.

New Jersey

All trustees are required to account to the court at least once each three years.¹¹¹

New Mexico

In a charitable trust the attorney general enjoys the same rights as the beneficiaries of a private trust.¹¹²

¹⁰⁸ *Id.* at § 317.29.

¹⁰⁷ Ann. Mo. Stat. § 352.240 (1956).

¹⁰⁸ Rev. Code of Mont., Ann. tit. 15, §§ 1401 to 1409 (1947).

¹⁰⁹ Rev. Stat. of Neb. ch. 30, § 240 (1943).

¹¹⁰ Nev. Rev. Stat. § 165.230 (1960).

¹¹¹ N. J. Stat. Ann. tit. 3A, ch. 9, § 3 (1953).

¹¹² N. M. Stat. ch. 33, art. 2, §§ 1 to 24 (1953).

New York

Trustees are required to file periodic reports with the proper court.¹¹³ The attorney general can maintain a suit on behalf of the beneficiaries to enforce a charitable trust.¹¹⁴

North Carolina

Trustees of charitable trusts are required to file annual accounts with the clerk of the superior court.¹¹⁵ If the trustees fail to file, or there is evidence of mismanagement, the clerk is to notify the attorney general who will take proper action.¹¹⁶

The statutes dealing with nonprofit corporations,¹¹⁷ allow the attorney general to commence an action for involuntary dissolution.¹¹⁸

North Dakota

Both the attorney general and the county attorney are given authority to bring actions to enforce charitable trusts.¹¹⁹

The statutes dealing with nonprofit corporations,¹²⁰ give to the attorney general the duty to commence an action for dissolution¹²¹ if a corporation breaks certain listed regulations.¹²²

Ohio

Legislation similar to New Hampshire.¹²³

Additional legislation requires nonprofit corporations to file an annual financial report with the probate court.¹²⁴ The prosecuting attorney has authority to examine corporate books and records and to bring an action to require correction of abuses.¹²⁵ The attorney general can also bring an action against a nonprofit corporation.¹²⁶

¹¹³ N. Y. Sup. Ct. Act §§ 255 and 256 (1961).

¹¹⁴ N. Y. Personal Prop. Law §§ 12-105 to -109 (1963); N. Y. Real Prop. Law §§ 113-29 to -31 (1963).

¹¹⁵ Gen. Stat. of N. C. § 36-19 (1950).

¹¹⁶ *Id.* at § 36-20.

¹¹⁷ *Id.* at §§ 55A-1 to -89.1.

¹¹⁸ *Id.* at §§ 55A-50 to -52.

¹¹⁹ N. D. Cent. Code Ann. tit. 59, ch. 04, § 02 (1960).

¹²⁰ *Id.* at tit. 10, ch. 24, § 01 to ch. 28, § 22.

¹²¹ *Id.* at tit. 10, ch. 26, § 08.

¹²² *Id.* at § 07.

¹²³ Ohio Rev. Code, *supra*, n. 15.

¹²⁴ *Id.* at § 1719.05.

¹²⁵ *Ibid.*

¹²⁶ *Id.* at § 1719.12.

Oklahoma

The statutes dealing with trusts,¹²⁷ confer upon the district courts the power to require accounts and supervise the administration of the trust if necessary.¹²⁸

There are also statutes dealing with religious, educational and benevolent corporations,¹²⁹ requiring such corporations to register with the Commission of Charities and Corrections.¹³⁰ Charitable corporations are required to file annual reports¹³¹ with the commission. The corporation must also keep certain records.¹³² Such records are open to inspection by the Commission. Violations are to be prosecuted by the attorney general or the proper county attorney.¹³³

Oregon

Uniform Supervision of Trustees for Charitable Purposes Act.¹³⁴

Pennsylvania

All charitable organizations must register with the Commission of Charitable Organizations.¹³⁵ It is the duty of the attorney general or district attorney to enforce the act.¹³⁶

If charitable trust administration is impractical or impossible, the court may, upon the application of any interested party or the attorney general, execute the cy pres doctrine.¹³⁷ If the attorney general is not the petitioner, he must be given notice of the action.¹³⁸

Rhode Island

Legislation similar to New Hampshire.¹³⁹

¹²⁷ Okla. Stat. Ann. §§ 60-175.1 to -175.53 (1961).

¹²⁸ *Id.* at § 60-175.23(A).

¹²⁹ *Id.* at §§ 18-552.1 to -552.18.

¹³⁰ *Id.* at § 18-552.3.

¹³¹ *Id.* at § 18-552.5.

¹³² *Id.* at § 18-552.6.

¹³³ *Id.* at § 18-552.14.

¹³⁴ Ore. Rev. Stat., *supra*, n. 23.

¹³⁵ Purdon's Pa. Stat. Ann. tit. 10, §§ 160-3 to -14(f) (Supp. 1964).

¹³⁶ *Id.* at § 160-14(f).

¹³⁷ *Id.* at § 301-10.

¹³⁸ *Ibid.*

¹³⁹ Gen. Laws of R. I., *supra*, n. 14.

South Carolina

Legislation similar to New Hampshire.¹⁴⁰

South Dakota

The attorney general has the duty of representing the beneficiaries of charitable trusts.¹⁴¹

Tennessee

At common law, the attorney general could not bring an action to enforce a charitable trust.¹⁴² Under the present statute,¹⁴³ the courts hold that he still cannot institute such an action; however, the statute is interpreted to give the right of action to the district attorney.¹⁴⁴ Thus while an individual can sue to enforce a charitable trust,¹⁴⁵ the attorney general cannot.

Texas

The attorney general is a necessary party to any action to alter¹⁴⁶ or terminate¹⁴⁷ a charitable trust. He has the power to agree to alter such a trust if he deems the alteration to be in the best public interest.¹⁴⁸

Nonprofit corporations are required to file a report with the secretary of state at least once each four years.¹⁴⁹ In case of failure to report, the attorney general may bring an action for involuntary dissolution.¹⁵⁰

Utah

All testamentary trustees are required to account to the court in which the will was probated.¹⁵¹

¹⁴⁰ Code of Laws of S. C., *supra*, n. 16.

¹⁴¹ S. D. Code of 1939 § 59.0603 (Supp. 1960).

¹⁴² *Green v. Allen*, 24 Tenn. 170 (1844).

¹⁴³ Tenn. Code Ann. tit. 23, § 2809 (1955).

¹⁴⁴ *State ex rel. Tennessee Childrens Home Society v. Hollingsworth*, 193 Tenn. 491, 246 S. W. 2d 345 (1952).

¹⁴⁵ Tenn. Code Ann. tit. 23, § 2809 (1955).

¹⁴⁶ Civil Stat. of Texas art. 4412a, § 2(b) (1960).

¹⁴⁷ *Id.* at § 2(a).

¹⁴⁸ *Id.* at § 5.

¹⁴⁹ *Id.* at art. 1396, § 9.01.

¹⁵⁰ *Id.* at § 7.01.

¹⁵¹ Utah Code Ann. tit. 75, ch. 17, § 31 (1953).

Vermont

When a gift, devise, legacy or trust is established for a class of unknown beneficiaries, the governor may appoint a person or persons to act as agent or attorney for such beneficiaries.¹⁵² All trustees of charitable trusts, whether incorporated or not, are required to file an annual account with the probate court.¹⁵³ Upon failure to account for two or more consecutive years, the attorney general can bring an appropriate action to force compliance.¹⁵⁴

Virginia

A suit to enforce a charitable trust can be brought in the name of the state if there is no other party capable of prosecuting such a suit.¹⁵⁵ It is also the duty of the attorney for the Commonwealth to make a motion in the proper court for the appointment of a trustee where none was appointed by the donor or settlor.¹⁵⁶

Washington

All trustees are required to account to each adult beneficiary¹⁵⁷ and such a trustee, if he desires, may account to the court.¹⁵⁸ There are apparently no provisions requiring trustees of charitable trusts or nonprofit corporations to account.

West Virginia

All trustees are required to file annual accounts with the commissioner of accounts.¹⁵⁹

Wisconsin

All trustees of testamentary charitable trusts are required to file annual accounts with the courts.¹⁶⁰ An action to enforce

¹⁵² Vt. Stat. Ann. § 2401 (1959).

¹⁵³ *Id.* at § 2501.

¹⁵⁴ *Id.* at § 2502.

¹⁵⁵ Code of Va. § 55-29 (1950).

¹⁵⁶ *Id.* at §§ 55-28 and -29.

¹⁵⁷ Rev. Code of Wash. § 30.30.020 (1959).

¹⁵⁸ *Id.* at § 30.30.030.

¹⁵⁹ W. Va. Code § 4185 (1961).

¹⁶⁰ Wis. Stat. Ann. § 317.06 (1957).

a public charitable trust may be brought by the attorney general.¹⁶¹ Such actions can also be brought by ten or more interested persons.¹⁶²

Wyoming

The court may direct trustees to account annually.¹⁶³ It is the duty of the state examiner to examine, at least once a year, the records of any funds given for the purpose of education.¹⁶⁴

¹⁶¹ *Id.* at § 231.34(1).

¹⁶² *Id.* at § 231.34(2).

¹⁶³ Wyo. Stat. § 4-32 (1957).

¹⁶⁴ *Id.* at § 9-104.